

STATE OF NEW HAMPSHIRE

STRAFFORD, SS.

SUPERIOR COURT

State of New Hampshire

v.

Donald J. Lewis

01-S-779-M

ORDER ON DEFENDANT'S MOTION TO SUPPRESS

The defendant moves to suppress evidence obtained as a result of his seizure, asserting that he was illegally seized in violation of his rights under part I, article 19 of the New Hampshire Constitution and the Fourth Amendment of the United States Constitution. Specifically, the defendant contends that the police officers did not have the necessary "reasonable and articulable suspicion" to seize his vehicle and requests that all evidence obtained as a result of that seizure be suppressed. The State objects. The relevant facts are as follows.

On March 16, 2001, Michael L. Crotto ("Crotto") and his wife and daughter went to the Inferno Nightclub ("the club") in Dover, New Hampshire, where a comedian was performing. While at the

club, Crotto observed the defendant in a very inebriated state. Crotto testified that the defendant was "quite intoxicated, even to the point that the comedian was making fun of him." Specifically, Crotto testified that the defendant's speech and behavior made it very clear that he was drunk.

Upon leaving the club, Crotto saw the defendant getting into a car. At first, it appeared to Crotto that the defendant was getting into the passenger side of the car. Crotto and his wife agreed that it was good that the defendant was not going to be driving. Subsequently, however, Crotto observed the defendant enter the driver's side of the car, and proceeded to drive away.

Crotto followed the defendant in his car and called the Dover Police Department. He gave a description of the car he was following, including its location and license plate number, and continued to follow the car within two or three car lengths. Crotto explained to dispatch that he thought the driver might be driving under the influence of alcohol and continued to follow the car. Crotto stayed on the phone with dispatch and gave continuing updates as to the car's whereabouts.

Meanwhile, Lieutenant Mark Riss ("Lt. Riss"), a shift commander for the Dover Police Department, was in the vicinity of Central Avenue when he received a dispatch regarding a car traveling south on that road. He got the registration number and description of the vehicle from dispatch and proceeded to the

area. He continued to get updated reports from dispatch regarding the location of the defendant's vehicle. Lt. Riss ultimately determined that he was approximately four cars behind the person who was reporting the car's whereabouts to dispatch and that the person reporting was driving a large sports utility vehicle directly behind the defendant's car.

Ultimately, Lt. Riss was able to position his car directly behind the defendant's. Lt. Riss testified that he did not observe the defendant driving in an erratic manner. Once he reached Orchard Street, Lt. Riss instructed Officer Meyer, who was at the same location, to continue following the defendant's vehicle because Officer Meyer had video equipment in his car. Officer Meyer followed the defendant and activated his video equipment. When the defendant's car pulled onto Silver Street, Lt. Riss and Crotto pulled over to the side of the road.

Upon walking up to Crotto's car, Lt. Riss realized he knew the identity of the reporting person. Lt. Riss testified that he has known Crotto for approximately fifteen years, both professionally and as a member of his church. Crotto told Lt. Riss that he had been at the Inferno Nightclub where he saw the defendant, who appeared to be drunk. Crotto related to Lt. Riss that the defendant was so drunk that the comedian performing at the club was making fun of him.

Lt. Riss radioed to Officer Meyer that he had made contact with the reporting driver. Lt. Riss instructed Officer Meyer to effectuate a traffic stop of the defendant. Officer Meyer drove into the driveway the defendant had pulled into and effectuated a traffic stop.

Because the State Constitution provides at least as much protection as the Federal Constitution in this area, see State v. Melanson, 140 N.H. 199, 200 (1995), the court addresses the defendant's claim under the State Constitution, referring to federal authority only to assist in the analysis. See State v. Ball, 124 N.H. 226, 232 (1983). Consistent with the rights afforded under part I, article 19 of the New Hampshire Constitution to be free from unreasonable searches and seizures of his person,

a police officer may make an investigative stop of a vehicle provided that the stop is based on a reasonable suspicion that the person detained had committed, was committing, or was about to commit a crime and the officer is able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.

State v. Melanson, 140 N.H. at 200-01.

The defendant asserts that the officers did not have a "reasonable and articulable suspicion that [he] had committed, was committing, or was about to commit a crime." Specifically, the defendant contends that the police did not observe him

personally and that they cannot depend solely on Crotto's descriptions to justify his seizure.

The court disagrees. In State v. Galgay, 145 N.H. 100 (2000), with facts much more tenuous than those presented here, the New Hampshire Supreme Court reversed a district court order granting a defendant's motion to suppress where the defendant argued the officer did not have the reasonable and articulable suspicion necessary to pull him over. In Galgay, an individual who provided his name, address, and phone number, called the police to report a suspected drunk driver. The individual gave a description of the car, its license plate number, its location, and described the erratic driving he had observed. The reporting individual also told the police that he had observed a white male wearing a white shirt drive the vehicle, stop the car, and enter a specific restaurant.

The officer in Galgay parked his car outside the reported restaurant. Approximately an hour after the reporting individual observed the erratic driving, the officer saw a white male in a white shirt exit the restaurant and enter the car described by the caller and drive away. Although the officer did not observe erratic driving while following the vehicle, the Supreme Court held that the officer had a reasonable suspicion to pull the defendant's car over. Id. at 104.

The facts of this case are more compelling than those in Galgay. Here, there was no time lapse between Crotto's and the police officers' observations of the defendant driving. Further, there was no question that the defendant was the same driver observed by both Crotto and the officers.

The defendant's reliance on cases involving tips to police from anonymous informants is misplaced. The New Hampshire Supreme Court has held that tips from known informants "whose reputation[s] can be assessed and who can be held responsible if the allegations turn out to be fabricated" differ from anonymous tips, which "alone seldom demonstrate[] the informant's basis of knowledge or veracity." State v. Blake, ___ N.H. ___, slip op. at 3 (February 2, 2001).

The defendant further contends that Officer Meyer, himself, did not have the requisite knowledge to support a reasonable suspicion to pull the defendant over. He asserts that Officer Meyer was merely directed to stop the defendant but did not have the knowledge that Lt. Riss had regarding the identity of the reporting individual and the specific observations that individual had made.

The court disagrees. Officer Meyer testified that he heard over dispatch about a suspected drunk driver. He heard the vehicle's description, its license plate number, that the vehicle was driven by a male and had been observed leaving the Inferno

nightclub. He heard continuing updates as to the vehicle's location, and testified that it became clear that the reporter was following the vehicle. After Lt. Riss positioned his car behind the defendant's vehicle, Officer Meyer agreed to continue following the vehicle in order to videotape the car's movements.

Although Officer Meyer did not make contact with Crotto and did not know Crotto's identity at the time of the stop, Officer Meyer did know that Lt. Riss had made contact with the reporter. Therefore, at the time of the stop, Officer Meyer knew that the reporter was not anonymous.

The court finds that Officer Meyer had a reasonable suspicion that the defendant had or was about to commit a crime. Even if the court had found that Officer Meyer did not have a reasonable suspicion, the court is persuaded by cases from other jurisdictions, cited by the New Hampshire Supreme Court in State v. Brown, 138 N.H. 407 (1994) and State v. Wellman, 128 N.H. 340 (1986), holding that the knowledge held by one officer may be imputed to a group of officers based on the "collective knowledge" rule. Although the New Hampshire Supreme Court has never squarely addressed the "collective knowledge" rule, this court is persuaded by the reasoning used by courts who have adopted the rule.

The court finds the officers had a reasonable suspicion that the defendant had or was about to commit a crime. Accordingly, the defendant's Motion to Suppress is **DENIED**.

So **ORDERED**.

Date: December 10, 2001

Bruce E. Mohl
Presiding Justice